

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DEBORAH MISAVAGE o/b/o	:	CIVIL ACTION
JARED KLEIN,	:	
Plaintiff	:	
	:	
v.	:	
	:	No. 01-1764
JO ANNE B. BARNHART,	:	
Commissioner of the	:	
Social Security Administration,	:	
Defendant	:	

**ORDER - MEMORANDUM**

AND NOW, this 22nd day of February, 2002, upon consideration of cross-motions for summary judgment and after review of Chief Magistrate Judge Melinson's Report and Recommendation, filed November 30, 2001, and plaintiff Deborah Misavage's objections, filed December 7, 2001, the following is ordered:

1. The Report and Recommendation is adopted and approved subject to this Memorandum; and plaintiff's objections are overruled.
2. Plaintiff's motion for summary judgment is denied.
3. Defendant's motion for summary judgment is granted.

Administrative Law Judge Mark D. Newberger's findings and reasons<sup>1</sup> support the Commissioner's decision and are based on "substantial evidence." Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999) (substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate").

---

<sup>1</sup>"Even if the evidence in the record, combined with the reviewing court's understanding of the law, is enough to support the order, the court may not uphold the order unless it is sustainable on the agency's findings and for the reasons stated by the agency." W.R. Grace & Co. v. E.P.A., 261 F.3d 220 (3d Cir. 2001) (quoting Kenneth Culp Davis & Richard J. Pierce, Jr., Administrative Law Treatise § 14:29 (1980)).

Plaintiff objects that evidence of her son's "marked [functional] limitations" was inadequately discussed and weighed by the ALJ.<sup>2</sup> 20 C.F.R. § 416.926a(a). Nearly all of the evidence complained about was adequately considered by the ALJ, although in some instances in connection with functional areas other than those identified by plaintiff.<sup>3</sup> Also, contrary to plaintiff's objection, the ALJ's findings and reasoning do not reflect that he simply adopted the opinion of Dr. Gallo, the medical expert, rather than weighing the opinion to the extent that it was relevant. For these reasons, plaintiff's objections are overruled.

---

Edmund V. Ludwig, J.

---

<sup>2</sup>Specifically, plaintiff objects that for the "social" functional area the ALJ "nowhere explained how he weighed the other school reports and mental health records that show that Jared cries when stressed, is easily frustrated, has temper tantrums, and is teased by his peers." Plaintiff's Objections to the Report and Recommendation at 4. For the "concentration, persistence or pace" area the ALJ "nowhere explained how he weighed . . . evidence in the record showing that Jared is unable to keep pace with other children in typical classroom games, requires on-on-one attention and simplified directions, sits away from his peers in class to keep him from being distracted, and completes assignments that are substandard and done too hastily." *Id.* at 5.

<sup>3</sup>Much of the evidence of "social" limitations referred to by plaintiff is referenced by the ALJ under "concentration, persistence or pace" – "Jared's teacher described him as having difficulty controlling his emotions and crying easily when confronted with a situation he cannot control. Jared was reported to . . . be easily distracted" – or under the "social" category itself: "Jared had problems controlling his anger with students who bothered him and . . . on one occasion he hit a student for calling his mother names." Record at 34. Much of the "concentration, persistence or pace" evidence is either cited in that section – "Jared was reported to have difficulty with multi-step, written or oral, instructions and to be easily distracted" – or is reasonably related to another functional area, where other evidence trumps it: "Cognitive/Communicative . . . In 8<sup>th</sup> grade, Jared earned A's, B's, and C's in his subjects . . . [and for] the second period of the 1998-1999 school year, Jared earned 5 B's; a C in science, and an A in art." *Id.* at 34, 33.